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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Procedure for Issuing Grants From the Anti-Pollution Bond Act and the Build Illinois Act for Sewage Treatment Works
- 2) Code Citation: 35 Ill. Adm. Code 363
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
363.101	Amendment
363.102	Amendment
363.201	Amendment
363.202	Amendment
363.203	Amendment
363.204	Amendment
363.205	Amendment
363.206	Amendment
363.207	Amendment
363.301	Amendment
363.501	Amendment
363.601	Repealed
363.602	Repealed
363.603	Repealed
363.702	Amendment
363.703	Repealed
363.704	Repealed
363.705	Amendment
363.801	Amendment
363.803	Repealed
363.804	Amendment
- 4) Statutory Authority: Implementing and authorized by Section 4 of the Anti-Pollution Bond Act [30 ILCS 405/4], Section 1-3 of the Build Illinois Act [30 ILCS 750/1-3] and Section 4 of the Environmental Protection Act [415 ILCS 5/4]
- 5) A Complete Description of the Subjects and Issues Involved: The proposed amendments provide that the combination of assistance provided under the Bond Act, Title II, and any other state or federal assistance shall not, instead of 75 percent, exceed 100 percent of the eligible project costs. The proposed amendments also provide that Bond Act grants, or supplemental Bond Act grants, may be available, instead of up to 75 percent, for up to 100 percent of the eligible project costs. Additionally, and instead of 70 percent, eligible projects not receiving a Title II or a Build Illinois Bond Fund grant may be issued a Bond

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Act grant provided that the State share does not exceed 100 percent of the eligible project costs. Next, the proposed amendments raise the maximum level of financial assistance, from all sources including grants and loans, from 85 percent to 100 percent, or less, the eligible project costs. Finally, the proposed amendments repeal outdated sections, correct typographical errors, and update statutory references.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking will not create or expand a State mandate under the State Mandates Act [30 ILCS 805].
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on the proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

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- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not-for-profit corporations affected: Any unit of local government that qualifies for a grant issued from the Anti-Pollution Bond Act for the planning, financing, and construction of sewage treatment works may be affected.

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- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: 39 Ill. Reg. 10131; July 17, 2015

The full text of the Proposed Amendments begins on the next page:

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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE C: WATER POLLUTION
CHAPTER II: ENVIRONMENTAL PROTECTION AGENCY

PART 363

PROCEDURE FOR ISSUING GRANTS FROM THE ANTI-POLLUTION
BOND ACT AND THE BUILD ILLINOIS ACT FOR SEWAGE TREATMENT WORKS

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Section

- 363.601 Availability of Funding ([Repealed](#))
- 363.602 State/Federal Piggyback Grants ([Repealed](#))
- 363.603 State Reimbursement Grants ([Repealed](#))

SUBPART G: BUILD ILLINOIS BOND FUND GRANTS

Section

- 363.701 Availability of Funding
- 363.702 Build Illinois Bond Fund Grants
- 363.703 Supplemental State/Federal Piggyback Grants ([Repealed](#))
- 363.704 Supplemental State Reimbursement Grants ([Repealed](#))
- 363.705 Supplemental Build Illinois Bond Fund Grants

SUBPART H: UNSEWERED COMMUNITIES GRANTS

Section

- 363.801 Applicability
- 363.802 Eligibility
- 363.803 Grant Percentage and Design Grants ([Repealed](#))
- 363.804 Limitations

AUTHORITY: Implementing and authorized by Section 4 of the Anti-Pollution Bond Act [30 ILCS 405/4], Section 1-3 of the Build Illinois Act [30 ILCS 750/1-3] and Section 4 of the Environmental Protection Act [415 ILCS 5/4].

SOURCE: Adopted and codified at 8 Ill. Reg. 15914, effective August 17, 1984; amended at 9 Ill. Reg. 3951, effective March 15, 1985; amended at 10 Ill. Reg. 216, effective December 20, 1985; amended at 27 Ill. Reg. 13421, effective July 25, 2003; amended at 41 Ill. Reg. _____, effective _____.

SUBPART A: INTRODUCTION

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Section 363.101 Purpose

- a) The Anti-Pollution Bond Act, [\[30 ILCS 405\]](#)~~(Ill. Rev. Stat. 1983, ch. 127, pars. 451-464)~~ provides that the State of Illinois may issue grants to units of local government for the planning, financing, and construction of sewage treatment works. ~~These~~^{Such} grants are made under the direction of the [Illinois Environmental Protection Agency](#). ~~("Agency")~~
- b) ~~This Part sets~~^{These rules set} forth the procedures used by the Agency in the issuance of grants to units of local government for the planning, financing, and construction of sewage treatment works.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 363.102 Definitions

- a) Unless specified otherwise, all terms shall have the meanings set forth in the Environmental Protection Act and the federal Clean Water Act (33 ~~USCU.S.C.~~ 1251 ~~et seq.~~) and regulations promulgated under those Acts ~~40 CFR 30, 33, and 35 (1983). No incorporation by reference in this Part, other than the Illinois Revised Statutes or the United States Code includes any later amendment or addition.~~
- b) For purposes of ~~this Part~~^{these rules} the following definitions apply:
- "Agency" means the [Illinois Environmental Protection Agency](#).
- "Bond Act" means the Anti-Pollution Bond Act, [\[30 ILCS 405\]](#)~~(Ill. Rev. Stat. 1983, ch. 127, pars. 451-464)~~.
- "Build Illinois Bond Act" means the Build Illinois Act [\[30 ILCS 750\]](#).
- "Title II" means Title II of the federal Clean Water Act, (33 ~~USCU.S.C.~~ 1281 ~~et seq.~~).
- "State Owned Facilities" means mental health or developmental centers or institutions for which the Department of Mental Health and Development Disabilities exercises executive and administrative supervision under [20 ILCS](#)

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~~1705/4 Ill. Rev. Stat. 1983, ch. 91½, par. 100-4~~, and correctional institutions or facilities for which the Department of Corrections maintains and administers control under the State Penitentiary System in accordance with ~~730 ILCS 5/3-2-2 Ill. Rev. Stat. 1983, ch. 38, par. 1003-2-2~~.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART B: GENERAL CRITERIA

Section 363.201 Relationship to Other Grant Programs~~Title II Grants~~

- a) Subject to Section 363.207, no recipient shall receive a grant or any other assistance~~no grant shall be issued~~ under the Bond Act for the planning, financing or construction of sewage treatment works if a grant has been offered under Title II ~~that~~which would provide 100%~~75% or more~~ of the eligible project costs.
- b) The combination of assistance provided under the Bond Act, Title II and any other State or federal assistance shall not exceed 100% of the eligible project costs.~~Subject to Section 363.207, no recipient shall receive any assistance under the Bond Act if the combination of assistance under the Bond Act and Title II equals or exceeds 75% of the eligible project costs; except as provided in Section 363.602 for Backlog Project Grants. The previous sentence shall not apply if an existing Bond Act grant offer, issued prior to January 1, 1973, specifies that the combination of assistance may not exceed 80% of the eligible project cost; in such case the recipient may not receive any assistance under the Bond Act if the combination of assistance under the Bond Act and Title II equals or exceeds 80% of the eligible project cost.~~
- c) Assistance under this Part may be reduced if required by the Clean Water Act.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 363.202 Reimbursement

If the recipient of a Bond Act grant is at any time offered any State, federal or local~~Title II~~ grant, or any other funding source, to assist in the payment of expenses for which a Bond Act grant has been issued, the recipient shall reimburse the State of Illinois for any Bond Act grant funds used to pay expenses paid or offered to be paid under another grant or funding source~~the Title II grant~~.

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(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 363.203 Allocation of Grant Funds

- a) Grant funds available under the Bond Act ~~and Title II~~ will be subject to an equal division of total grant funds available to the State between the service area of the Metropolitan ~~Water Reclamation~~Sanitary District of Greater Chicago and the area which is comprised of the geographical balance of the ~~State~~state, to the extent that projects in either area in any grant year have qualified to receive Bond Act ~~or Title II~~ grant funds and the Agency has determined that the projects are ready to proceed in accordance with the criteria for grant award.
- b) If insufficient projects in either area are ready to proceed in any grant year to permit an equal division of the total grant funds available to the State, grants will be made to those projects in either area ~~that~~which are ready to proceed to the extent that funds are available.
- c) Any imbalance in the division of the total grant funds available to the State shall be carried forward from year to year and shall be applied as projects are ready to proceed to achieve an accumulatively equal distribution, if possible within the constraints of this Part, to both areas of the total of the grant funds available to the State.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 363.204 Supplemental Grants

A unit of local government which has received a ~~State~~state grant offer shall be eligible for a supplemental ~~State~~state grant not to exceed ~~100%~~the appropriate percentage of eligible costs of the project. The issuance of a supplemental grant will be based on the availability of Bond Act funds.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 363.205 Required Content and Filing of Applications for Bond Act Grants

- a) All projects receiving grants pursuant to this Part must comply with the requirements of 35 Ill. Adm. Code 360.

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- b) Bond Act grants will be made only for the funding of eligible project costs ~~that~~which comply with the requirements of 40 CFR 35 Subpart I Appendix A and B (1984), ~~as published on February 17, 1984, in the Federal Register (as amended at 55 Fed. Reg. 27098, June 29, 1990). No later editions are included in the incorporation.~~
- b) ~~Any of the requirements of 40 CFR 35 Subpart I (1984), except facilities planning, sewer system evaluation, user charges, sewer use ordinance, and initiation of construction may be waived in writing by the Agency, in whole or in part, if the purpose of the requirement has been accomplished or if the requirement waived is not considered by the Agency to be necessary to assure that the project attains pollution control goals in a cost effective manner.~~
- e) ~~Bond Act grants will not be offered for any project unless a complete application for the project is filed prior to the filing deadline and unless the Agency has entered the project on the priority list for the fiscal year in which the grant is requested as determined by Agency Rules entitled "Procedures and Requirements for Determining Construction Grant Priorities for Municipal Sewage Treatment Works Needs." (35 Ill. Adm. Code 364).~~
- d) ~~Any of the requirements of Subpart H of this Part, except Sections 363.802(e), 363.803(a), and 363.803(b)(2) and any provisions of Part 360 or Part 365 (as applicable) that may not be waived pursuant to those Parts, may be waived in writing by the Agency, in whole or in part, if the purpose of the requirement has been accomplished or if the requirement is not considered by the Agency to be necessary to assure that the project attains the goals of the Unsewered Communities Grant Program.~~

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 363.206 Limitations Upon Grants for Collection Systems

The facilities ~~that~~ convey wastewater from individual structures or from private property to the public lateral sewer are not eligible for grant funding, with the exception of pumping units and pressurized lines for individual structures or groups of structures when ~~those~~ units are cost effective and owned and maintained by the grant recipient.

- a) ~~Bond Act grants that may be used for planning, financing and construction of~~

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~~sewage collection systems will be limited as follows:~~

- ~~1) The area within which the system will be constructed must have been within the incorporated boundaries of the grant recipient on October 18, 1972;~~
 - ~~2) Design capacity for the sewer system will not exceed one hundred fifty percent (150%) of the wastewater flows originating from the community as it existed on October 18, 1972. This limitation will be applied sewer line by sewer line; and~~
 - ~~3) The facilities which convey wastewater from individual structures or from private property to the public lateral sewer are not eligible for grant funding, with the exception of pumping units and pressurized lines for individual structures or groups of structures when such units are cost effective and then only if such units are owned and maintained by the grant recipient.~~
- ~~b) Eligible for grant funding are the common lateral sewers, within a publicly owned treatment system, which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual structures or from private property, and which include service connection "Y" fittings designed for connection with those facilities.~~

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 363.207 State Owned Facilities

- a) Bond Act grants for that portion of the local share of eligible project costs attributable to ~~State~~state owned facilities shall not be awarded unless the following conditions are met:
 - 1) The grant is in conjunction with and in addition to a Title II grant or a Bond Act grant under Subparts C, D or E awarded to an eligible unit of local government;
 - 2) The proposed treatment works project must provide service to residential, industrial and commercial users within the boundaries of the unit of local government in addition to providing service to the ~~State~~state owned

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facility;

- 3) The proposed sewage treatment works must be owned and operated by a unit of local government and must be located on property ~~that~~^{which} is also owned by the unit of local government~~;~~[;]
 - 4) Grants to the applicant for a share of the local cost attributable to the ~~State~~^{state} owned facility must be awarded to the unit of local government at the time that the Step 3 grant is awarded and prior to initiation of construction of the sewage treatment works~~;~~[;]
 - 5) The grant for the share of the local cost attributable to the ~~State~~^{state} owned facility shall not be awarded unless the Agency has approved a cost effective analysis of the treatment works configuration in facility planning~~;~~ ~~and~~⁻
 - 6) The grant for the share of the local cost attributable to the ~~State~~^{state} owned facility shall not exceed 100% of the ~~State~~^{state} share of eligible ~~project~~^{projects} costs, as determined ~~by~~^{pursuant to} a signed written service agreement between the applicant and the ~~State~~^{state} agency ~~that~~^{which} operates the ~~State~~^{state} owned facilities, which ~~are~~^{is} to be served by the treatment works.
- b) No grant under this section may be made if the state owned facility is eligible and has been approved by the Capital Development Board for securing its share of the local funding under the Capital Development Bond Act of 1972 [30 ILCS 420]~~(Ill. Rev. Stat. 1983, ch. 127, pars. 751 et seq.)~~ or any other bonding program of the State of Illinois.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART C: STANDARD PRIORITY PROJECT GRANTS

Section 363.301 Project Priority Requirement

- a) Bond Act grants to units of local government under this Section shall be made in accordance with the grant applicant's priority as established under ~~Agency rules entitled "Procedures and Requirements for Determining Construction Grant Priorities for Municipal Sewage Treatment Works Needs."~~^{(35 Ill. Adm. Code}

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364).

- b) Except as set forth in ~~Subparts~~Subtitles D and E, the Director of the Agency shall not approve a project for funding under this Subpart unless the priority of the project is within the range of project priorities for which grant funding from combined ~~State~~state and federal resources is available.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART E: REGIONALIZATION PROJECT GRANTS

Section 363.501 Availability of Funding

- a) Notwithstanding Subpart C, the Agency may provide grant assistance under this Subpart, to units of local government ~~that~~which are entirely or partially unsewered for the planning, financing and construction of interceptor or collector sewers if the following requirements are met:
- 1) The proposed sewer system is included in an area of regionalization in which ~~State~~state or federal funds have been or will be obligated to construct a regional treatment facility; and
 - 2) The regional treatment facility has been planned to accommodate and designed with capacity to treat sewage to be conveyed by the proposed sewer system.
- b) Bond Act grants may be available to fund up to ~~100%~~75% of the eligible project costs for planning, design and construction of interceptor or collector sewers.
- c) The following projects and project costs are not eligible for funding under this Subpart:
- 1) Projects of which federal or ~~State~~state standard priority construction grant funds are expected to be available;
 - 2) Projects costs for systems designed to intercept, store~~;~~ or treat wet weather overflows; and
 - 3) Projects ~~that~~which consist of sewer systems for partially sewered

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communities ~~that~~^{which} are tributary to single-municipal treatment facilities.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART F: BACKLOG PROJECT GRANTS

Section 363.601 Availability of Funding (Repealed)

~~Eligible backlog projects include those projects listed in P.A. 83-1231 (effective July 20, 1984).~~

(Source: Repealed at 41 Ill. Reg. _____, effective _____)

Section 363.602 State/Federal Piggyback Grants (Repealed)

~~For those backlog projects receiving a Title II grant after September 30, 1984, a Bond Act grant may also be issued under this Section provided that:~~

a) ~~the total percentage of the grant funding does not exceed 70 percent.~~

b) ~~the State share of design will be an allowance in accordance with the criteria set forth in 35 Ill. Adm. Code 363.205.~~

(Source: Repealed at 41 Ill. Reg. _____, effective _____)

Section 363.603 State Reimbursement Grants (Repealed)

~~For those backlog projects not receiving a Title II grant, a Bond Act grant may be issued provided the State share does not exceed 70 percent. The State grant shall be issued in increments based on cash flow limitations relating to the sales of bonds.~~

(Source: Repealed at 41 Ill. Reg. _____, effective _____)

SUBPART G: BUILD ILLINOIS BOND FUND GRANTS

Section 363.702 Build Illinois Bond Fund Grants

For those projects not receiving a Title II grant, a Build Illinois Bond Fund grant may be issued provided:

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- a) the State share does not exceed ~~100%~~^{70 percent},
- b) the State share of either planning or design, or both, will be an allowance in accordance with the criteria set forth in ~~Section 35 Ill. Adm. Code~~ 363.205.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 363.703 Supplemental State/Federal Piggyback Grants (Repealed)

~~For those projects which receive a State/Federal piggyback grant after September 30, 1984, as set forth in Section 363.602, a supplemental Build Illinois Bond Fund grant may be issued provided that the total percentage of State/Federal grant funding does not exceed 70 percent.~~

(Source: Repealed at 41 Ill. Reg. _____, effective _____)

Section 363.704 Supplemental State Reimbursement Grants (Repealed)

~~For those backlog projects not receiving a Title II grant, a supplemental Build Illinois Bond Fund grant may be issued provided that the State share does not exceed 70 percent. The State grant shall be issued in increments based on cash flow limitations relating to the sale of bonds.~~

(Source: Repealed at 41 Ill. Reg. _____, effective _____)

Section 363.705 Supplemental Build Illinois Bond Fund Grants

To the extent that Build Illinois Bond Funds are available, a supplemental Build Illinois Bond Fund grant may be issued under this Section for those projects ~~that~~^{which} received a Bond Act grant on or before September 30, 1984, and ~~that~~^{which} did not receive full ~~100%~~^{75 percent} funding of eligible project costs provided that:

- a) the Agency has received construction bids on the project;⁵ and
- b) the State share does not exceed ~~100%~~^{75 percent} of the total eligible project cost.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART H: UNSEWERED COMMUNITIES GRANTS

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Section 363.801 Applicability

- a) All projects receiving unsewered communities grants pursuant to this Subpart must comply with the requirements of 35 Ill. Adm. Code 360 (~~General Conditions of State of Illinois Grants under the Anti Pollution Bond Act of 1970~~).
- b) For projects receiving unsewered communities grants pursuant to this Subpart that also receive a Water Pollution Control Loan Program loan, compliance with 35 Ill. Adm. Code 365 (~~Procedures for Issuing Loans from the Water Pollution Control Loan Program~~) will satisfy the requirements of 35 Ill. Adm. Code Part 360.
- c) Except Sections 363.802(c), any of the requirements of Subpart H of this Part may be waived if the purpose of the requirement has been accomplished or if the requirement is not considered by the Agency to be necessary to assure that the project attains the goals of the Unsewered Communities Grant Program.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 363.803 Grant Percentage and Design Grants (Repealed)

a) ~~Grant Percentage~~

~~Communities receiving grants under the unsewered communities grant program will be eligible to receive grants of between 10 and 70% of eligible project costs depending on the relationship between the community's median household income (MHI) to the statewide MHI based on the latest census as incorporated by reference at 35 Ill. Adm. Code 366.103. The following table lists the percentage of eligible project costs that may be provided to an applicant based on the applicant's MHI percentage above or below the statewide MHI:~~

State MHI	Grant Percentage
80% and below	70%
81%	69%
82%	68%
83%	67%
84%	66%
85%	65%

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86%	64%
87%	63%
88%	62%
89%	61%
90%	60%
91%	59%
92%	58%
93%	57%
94%	56%
95%	55%
96%	54%
97%	53%
98%	52%
99%	51%
100%	50%
101%	49%
102%	48%
103%	47%
104%	46%
105%	45%
106%	44%
107%	43%
108%	42%
109%	41%
110%	40%
111%	39%
112%	38%
113%	37%
114%	36%
115%	35%
116%	34%
117%	33%
118%	32%
119%	31%
120%	30%
121%	29%
122%	28%
123%	27%
124%	26%

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125%	25%
126%	24%
127%	23%
128%	22%
129%	21%
130%	20%
131%	19%
132%	18%
133%	17%
134%	16%
135%	15%
136%	14%
137%	13%
138%	12%
139%	11%
140% or above	10%

b) ~~Design Grants~~

- ~~1) Design grants may be made upon submission of an approved facilities plan pursuant to 35 Ill. Adm. Code 365 and an architectural/engineering agreement for design services.~~
- ~~2) An applicant will be eligible for a design grant of between 10 and 70% of the architectural/engineering agreement for design services depending on the relationship between the community's MHI and the state-wide MHI as provided in subsection (a) of this Section.~~
- ~~3) An applicant may elect to receive a design grant prior to the start of design or as a reimbursement at the start of construction.~~

(Source: Repealed at 41 Ill. Reg. _____, effective _____)

Section 363.804 Limitations

~~a) Grant participation for sewers shall be limited to sewers necessary to cost-effectively serve buildings in existence on July 1, 2001. b) The maximum amount of grant assistance is \$5 million for any one applicant on a cumulative basis. c) The maximum percentage of~~

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~~grant assistance from all available sources is 85% of eligible project costs.~~ The
maximum financial assistance from all sources including grants and loans cannot exceed
100% of eligible project costs.

(Source: Amended at 41 Ill. Reg. _____, effective _____)